Meeting of States Parties

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Conditions of service and compensation for members of the International Tribunal for the Law of the Sea

Effects of fluctuations in exchange rates on the remuneration of members of the International Tribunal for the Law of the Sea

Prepared by the Tribunal

I. Introduction

1. During the fourteenth Meeting of States Parties in June 2004, the Registrar of the International Tribunal for the Law of the Sea was requested to make proposals for consideration at the fifteenth Meeting with respect to an appropriate mechanism for addressing the effects of fluctuation in exchange rates on the remuneration of the members of the Tribunal.[1] Pursuant to that request, the present document examines the floor/ceiling mechanism applicable to the International Court of Justice, which is designed to provide protection against the exchange rate fluctuations in respect of the emoluments of the members of the Court, and proposes to apply the same mechanism to the members of the Tribunal.

II. Remuneration of the members of the Tribunal

2. The level of the remuneration of the members of the Tribunal was determined at the fourth Meeting of States Parties in 1996 based on the comparator, which was the emoluments received by members of the International Court of Justice. In this regard, the Meeting of States Parties decided to maintain equivalence with the remuneration levels of judges of the Court.[2]

3. The General Assembly, in its resolution 53/214 of 18 December 1998, set the annual salary of the judges of the International Court of Justice at 160,000 United States dollars. In the light of that decision, the ninth Meeting of States Parties in

[1] SPLOS/119 and Corr.1, para. 35.
[2] SPLOS/WP.3/Rev.1, para. 17.

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1999 approved an adjustment of the maximum annual remuneration of the members of the Tribunal to $160,000, effective 1 January 2000.[3]

4. According to the decision of the second Meeting of States Parties, "the overall remuneration of the members of the Tribunal would consist of three elements: an annual allowance; a special allowance for each day that they were engaged on the business of the Tribunal; and a subsistence allowance for each day that they attend meetings at the seat of the Tribunal or elsewhere".[4] The annual allowance has been set at one third of the overall remuneration ($53,333.33). The special allowance and subsistence allowance are each subject to a maximum limit of one third of the overall remuneration.[5]

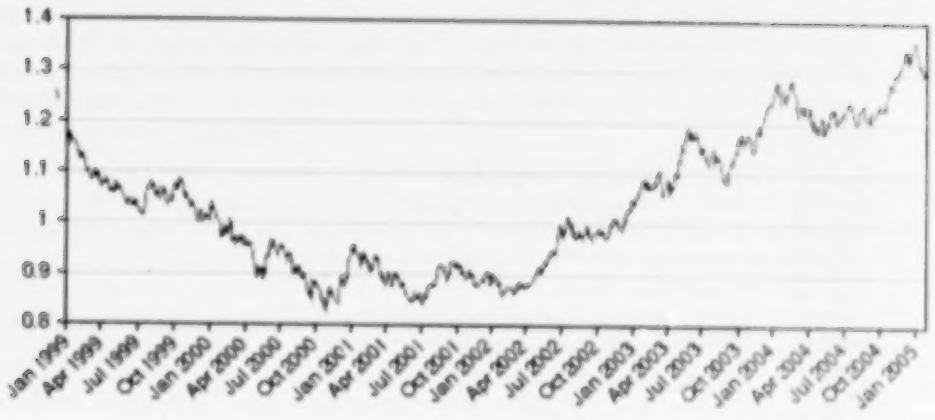
5. Consistent with article 18, paragraph 2, of the statute of the Tribunal, its President, who resides at the seat of the Tribunal, receives an overall annual remuneration of $160,000 and a special annual allowance of $15,000. The Vice-President of the Tribunal is entitled to receive a special allowance for each day on which he or she acts as President.

III. Effects of exchange rates on the remuneration of the members of the Tribunal

6. The euro (€) was introduced on 1 January 1999. At that time, the exchange rate of euro/United States dollar was 1.1789. The value of the euro subsequently depreciated against the United States dollar, until November 2000. Since then, the euro has become increasingly stronger against the dollar, and, as at March 2005, stands at 1.3210 dollars according to the exchange rate fixed by the United Nations. By way of illustration, it may be noted that the annual allowance of members of the Tribunal for October 2000 amounted to €5,017, while, by October 2004, it was reduced to €3,608. The fluctuations in the relative values of these two currencies are shown in figure 1 below (source: statistics of the European Central Bank).

[3] SPLOS/44, paras. 2 and 3.
[4] SPLOS/4, para. 25 (a) (iv).
[5] SPLOS/WP.3/Rev.1, paras. 15 and 16.

Figure 1
Value of the euro in United States dollars



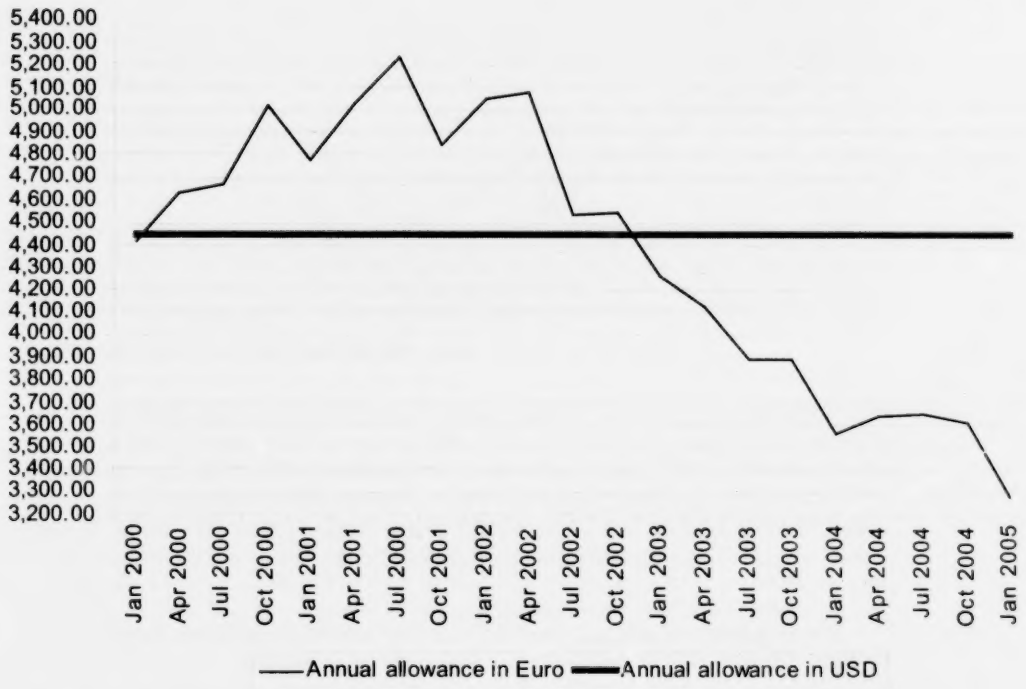
Min=0.8252 (26 Oct. 2000); Max=1.3633 (28 Dec. 2004)

7. While the budget of the Tribunal is now calculated in euros in accordance with its Financial Regulations, the United States dollar is still used as the reference currency for fixing the remuneration level of members of the Tribunal. The annual and special allowances of judges are paid in the currency selected by the judge concerned. The depreciation of the United States dollar against the euro has caused adverse effects on the remuneration of members of the Tribunal, in particular since 2003.[6]

8. Figure 2 below illustrates the effects of fluctuations in exchange rates between the United States dollar and the euro on the annual allowance of members of the Tribunal since January 2000, when the current level of remuneration was introduced. Specific figures giving the amounts of annual allowances in United States dollars as well as in euros are provided in annex I to the present report.

[6] As noted by the Secretary-General in his report on the "Conditions of service and compensation for officials other than Secretariat officials" (A/C.5/59/2 and Corr.1, para. 18): "Since January 2002 the United States dollar lost, on average, 26.8 per cent against the euro."

Figure 2
Change in the value of biannual allowance of member of the Tribunal expressed in euros



9. Similar adverse effects apply to the amount of the special allowances paid for each day that members are engaged in the business of the Tribunal. According to the decision of the Meeting of States Parties, the maximum amount of the special allowance has been set at one third of the overall remuneration ($53,333.33) and is fixed in United States dollars (currently the special allowance is calculated on the basis of 220 days at $242.42). This allowance has also been adversely affected owing to the considerable appreciation of the euro against the United States dollar.

IV. Floor/ceiling mechanism adopted by the United Nations

10. Since the emoluments of judges of both the International Court of Justice and the International Tribunal for the Former Yugoslavia are based on the United States dollar, and since the two institutions are located in the euro zone, judges of these courts are exposed to the risk of exchange rate fluctuations. In order to deal with adverse/positive effects resulting from exchange rate fluctuations, the United

Nations devised a currency floor/ceiling mechanism for emoluments of judges.[7] It applies to all judges of the two courts regardless of their place of residence.

11. Under the mechanism, the floor/ceiling rate is set at 4 per cent below/4 per cent above the average exchange rate of the euro vis-à-vis the United States dollar for the previous year. The United Nations exchange rate for each month is set on the last day of the month before and remains in effect for the entire month. This system has a similar effect to the post-adjustment mechanism for staff members in the Professional and higher categories, which was introduced to protect personnel against currency fluctuations.

12. It may be useful to explain how the system works at the International Court of Justice. With respect to judges of the Court, emoluments are $160,000 per year, or $13,333 monthly. For 2002, the floor rate of exchange was 1.0719 dollars to the euro and the ceiling rate of exchange was 1.16122 dollars to the euro. If the United States dollar fell below 1.0719, a member of the Court would receive €14,292 ($13,333 x 1.0719). If the United States dollar fell to 1.02, a member of the Court would receive €14,292, or if he/she wished to be paid in United States dollars, $14,011 (€14,292/1.02). Alternatively, if the United States dollar rose to 1.24, a member of the Court would receive €15,483 ($13,333 x 1.16122) or if he/she wished to be paid in United States dollars, $12,486 (€15,483/1.24).

13. For 2003, 2004 and 2005, the floor rate of exchange is €1.0272 and the ceiling rate of exchange is €1.1128. If the United States dollar falls below 1.0272, a member of the Court would receive €13,696 ($13,333 x 1.0272). If the United States dollar falls to 0.757 (March 2005 rate), a member of the Court would receive €13,696 ($13,333 x 1.0272), or if he/she wished to be paid in United States dollars, $18,092 (€13,696/0.757). Alternatively, if the United States dollar rises to 1.24, a member of the Court would receive €14,837 ($13,333 x 1.1128), or if he/she wished to be paid in United States dollars, $11,965 (€14,837/1.24).[8]

V. Proposals

14. It is proposed to apply the same mechanism to the judges of the Tribunal. If this mechanism is adopted, judges other than the President would receive €4,565 ($4,444 x 1.0272) or $6,030 (€4,565/0.757) as an annual allowance for March 2005 instead of €3,364 or $4,444 under the current system. The President would receive as an annual allowance for March 2005, for example, €13,696 ($13,333 x 1.0272) or $18,092 (€13,696/0.757) instead of €10,093 or $13,333 under the current system.

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[7] The floor and ceiling measures were introduced by the General Assembly in its resolution 43/217 of 21 December 1988 (sect. VI), in which it approved the recommendations of the Advisory Committee on Administrative and Budgetary Questions contained in A/43/7/Add.6, paras. 8 to 11. A recent summary of the operation of the scheme is contained in A/C.5/56/14, paras. 9 to 15.

[8] In his report on the "Conditions of service and compensation for officials other than the Secretariat officials" (A/C.5/59/2 and Corr.1, para. 89), the Secretary-General noted that "the mechanism used to regulate emoluments against the weakening/strengthening of the United States dollar against the euro was able, through the exercising of some flexibility, to provide adequate protection in the value of the level of salary of the judges over the last three-year period". It may be further noted that the mechanism not only protects judges against the weakening of the United States dollar vis-à-vis the euro but also mitigates the financial implications for the Tribunal should the United States dollar appreciate against the euro.

15. The mechanism would similarly be applicable to special allowance payable for each day that judges are engaged on business of the Tribunal. Under this mechanism, judges would receive as special allowance for March 2005 per day, for example, €249 ($242.42 x 1.0272) or $329 (€249/0.757) instead of €183.51 or $242.42 under the current system.

16. The subsistence allowance would not be affected by the mechanism since the amount of subsistence allowance applicable to Hamburg is fixed in euros on a monthly basis by the United Nations.

17. Comparative tables are attached to show the effect of the mechanism over a five-year period. Annex I shows the calculation of annual allowance in United States dollars and in euros using the current practice. Annex II shows the calculation in United States dollars and in euros that would have resulted using the International Court of Justice floor/ceiling mechanism.

VI. Budget implications

18. The application of the floor/ceiling mechanism to the remuneration of judges of the Tribunal for 2005-2006 would require an adjustment to the budget of the Tribunal. The 2005-2006 budget was prepared by using the United States dollar/euro exchange rate of 0.804 fixed by the United Nations for March 2004 while a budget based on the floor/ceiling mechanism would be calculated on the United States dollar/euro floor rate of 1.0272 for 2005-2006.

19. Should the Meeting of States Parties decide that the floor/ceiling mechanism would apply to the remuneration of the members of the Tribunal, effective 1 July 2005, the respective budget items would be affected for the period from July 2005 to December 2006 based on the adjusted remuneration as shown in the following table:

	United States dollars (Adjusted appropriation	*€ (Adjusted appropriation)*[a]	*€ (Floor/ceiling)*	*Increase (€)*
Recurrent expenditure	**2 187 847**	**1 656 203**	**2 247 357**	**591 154**
Annual allowance	1 700 080	1 287 506	1 747 062	459 556
Special allowance	154 618	117 047	158 824	41 777
Special allowance (preparatory work)	77 309	58 523	79 412	20 889
President annual allowance	255 120	193 127	262 059	68 932
Case-related costs	**642 984**	**486 739**	**660 474**	**173 735**
Special allowance	324 698	245 796	333 530	87 734
Special allowance (preparatory work)	270 582	204 831	277 942	73 111
Compensation for two judges ad hoc	47 704	36 112	49 002	12 890
Total	**2 830 831**	**2 142 942**	**2 907 831**	**764 889**

[a] As outlined in SPLOS/2005/WP.1.

20. The increases referred to in paragraph 19 above are additional to the appropriations approved for the financial period 2005-2006. To finance these additional appropriations, the Tribunal proposes that the Meeting of States Parties grant it authorization to use part of the savings of $500,000 from the financial period 2002,[9] up to an amount of €263,000. In addition, the Tribunal proposes to utilize the savings in financial year 2004, estimated at €150,000 ($200,000).

21. A supplementary budget for the biennium budget 2005-2006, amounting to €351,889 is sought. This may be summarized as follows (in euros):

Savings from 2002	378 500
Requirement for adjustment of the remuneration[a]	-115 500
Balance available from savings 2002	263 000
Balance available from savings 2004	+150 000
Total of balance available	413 000
Resources	
Required for floor/ceiling mechanism July 2005-December 2006	764 889
Balance available from savings 2002 and 2004	-413 000
Supplementary requirement	351 889

[a] See SPLOS/2005/WP.1, para. 12.

22. A draft decision is attached in annex III to the present report.

[9] See SPLOS/119 and Corr.1, para. 37.

Annex I

Computation worksheet for the calculation of annual allowances[a]

Year	*Monthly amount currently paid in United States dollars*	*Rate of exchange for January*	*Annual allowance in euros (for January)*	*Rate of exchange for April*	*Annual allowance in euros (for April)*	*Rate of exchange for July*	*Annual allowance in euros (for July)*	*Rate of exchange for October*	*Annual allowance in euros (for October)*
2000[b]	4 444.00	0.995000	4 421.78	1.042693	4 633.73	1.051001	4 670.65	1.128999	5 017.27
2001[b]	4 444.00	1.074684	4 775.90	1.130998	5 026.16	1.176002	5 226.15	1.089001	4 839.52
2002	4 444.00	1.136000	5 048.38	1.143000	5 079.49	1.019000	4 528.44	1.022000	4 541.77
2003	4 444.00	0.958000	4 257.35	0.929000	4 128.48	0.875000	3 888.50	0.875000	3 888.50
2004	4 444.00	0.801000	3 559.64	0.820000	3 644.08	0.821000	3 648.52	0.812000	3 608.53
2005	4 444.00	0.737000	3 275.23						

[a] Current practice of the International Tribunal for the Law of the Sea.

[b] For 2000 to 2001, the official exchange rate of 1.95583 deutsche marks per euro has been used.

Annex II

Computation worksheet for the calculation of annual allowances with floor and ceiling rates[a]

Year	*Rate of exchange for January*	*Rate used*[b]	*Annual allowance in euros for January*	*Annual allowance in United States dollars (equivalent) for January*	*Rate of exchange for April*	*Rate used*[b]	*Annual allowance in euros for April*	*Annual allowance in United States dollars (equivalent) for April*	*Rate of exchange for July*	*Rate used*[b]	*Annual allowance in euros for July*	*Annual allowance in United States dollars (equivalent) for July*	*Rate of exchange for October*	*Rate used*[b]	*Annual allowance in euros for October*	*Annual allowance in United States dollars (equivalent) for October*
2000	0.995000	C	4 315.52	4 337.21	1.042693	C	4 315.52	4 138.82	1.051001	C	4 315.52	4 106.10	1.128999	C	4 315.52	3 822.43
2001	1.074684	A	4 775.90	4 444.00	1.130998	C	5 001.17	4 421.91	1.176002	C	5 001.17	4 252.69	1.089001	A	4 839.52	4 444.00
2002	1.136000	A	5 048.38	4 444.00	1.143000	A	5 079.49	4 444.00	1.019000	F	4 763.52	4 674.70	1.022000	F	4 763.52	4 660.98
2003	0.958000	F	4 564.88	4 765.01	0.929000	F	4 564.88	4 913.76	0.875000	F	4 564.88	5 217.01	0.875000	F	4 564.88	5 217.01
2004	0.801000	F	4 564.88	5 698.98	0.820000	F	4 564.88	5 566.93	0.821000	F	4 564.88	5 560.15	0.812000	F	4 564.88	5 621.77
2005	0.737000	F	4 564.88	6 193.87												

Based upon an annual allowance of $4,444.00 per month.

For 2000 to 2001 the official exchange rate of 1.95583 deutsche mark per euro has been used to convert deutsche marks into euros.

Based upon the following floor and ceiling rates of exchange:

2000	*2001*	*2002*	*2003*	*2004*	*2005*
0.8985	1.039157	1.0719	1.0272	1.0272	1.0272
0.97109	1.125375	1.16122	1.1128	1.1128	1.1128

[a] International Court of Justice practice.

[b] The letter F indicates the use of the floor rate of exchange, the letter C indicates the use of the ceiling rate of exchange and the letter A indicates the actual rate of exchange.

Annex III

Draft decision on a floor/ceiling mechanism to regulate the remuneration of the members of the International Tribunal for the Law of the Sea

The Meeting of States Parties,

Considering that, in respect of the level of remuneration of the members of the International Tribunal for the Law of the Sea ("the Tribunal"), the fourth Meeting of States Parties decided to maintain equivalence with the remuneration levels of judges of the International Court of Justice;[a]

Considering also that the General Assembly devised a currency/floor ceiling mechanism for the emoluments of the judges of the International Court of Justice ("the Court") through its resolution 43/217 of 21 December 1988 in order to deal with exchange rate fluctuations between the United States dollar and the local currency at the seat of the Court and that this mechanism has been applied since then to the emoluments of the judges of the Court;

Considering further that the remuneration of the members of the Tribunal has been significantly affected by exchange rate fluctuations;

1. *Decides* to apply to the annual allowance and the special allowance of the members of the Tribunal, effective 1 July 2005, the same floor/ceiling mechanism as is applicable to the emoluments of the judges of the Court, on the understanding that any adjustment made to the mechanism in respect of the Court would equally apply to the mechanism in respect of the Tribunal;

2. *Decides also* to authorize the Tribunal to finance overexpenditures due to the application of the floor/ceiling mechanism by using part of the savings from the financial period 2002 up to an amount of 263,000 euros and those from the financial period 2004 up to an amount of 150,000 euros;

3. *Approves* a supplementary budget of 351,899 euros for the financial period 2005-2006;

4. *Decides* that the Registrar shall report to the sixteenth Meeting of States Parties on any action taken pursuant to the present decision.

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[a] See SPLOS/WP.3/Rev.1, para. 17.